

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 322 of 1987****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- 4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?
- =====

SAIYADNA M BURHANUDDIN SAHEB**Versus****TARABEN MOHAMMED SHAFI IBRAHIMHAKIM HEIRS OF S.I.HAKIM AND OTHERS****Appearance :**

MR MB GANDHI for the Petitioner

MR AJ MEMON for Respondent Nos.3 to 6

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**Date : 31/01/2006****ORAL JUDGMENT**

1. Petitioner - original plaintiff - His Holiness Dr.Saiyadna Mohammed Burhanuddin Saheb Davat Property Trust's Sole Trustee's General Power of Attorney and General Estate Manager Shaikh Rajabhai Mohammedali is before this Court being aggrieved of dismissal of H.R.P.Suit No.3177 of 1974 by the learned Judge of the

trial Court - Small Causes Court No.10 at Ahmedabad on 31.01.1980 and dismissal of Civil Appeal No.164 of 1980 by the Appellate Bench of Small Causes Court at Ahmedabad on 22.12.1986.

2. The facts giving rise to the present proceeding are that the plaintiff - duly registered Public Trust of which person named is the sole trustee and who is having several properties in the city of Ahmedabad one of which is on Naroda Road - a shop bearing Survey No.488/B/5 consisting of one room was let by the plaintiff to the deceased defendant who had agreed to pay Rs.9/- as rent, commencing the tenancy month from 1st day of English calendar month.

It is alleged by the plaintiff that the tenant did not pay the rent regularly and fell in arrears of 32 months rent from 01.09.1971 to 30.04.1974; that the trust required the suit premises for the objects of the trust bonafide and reasonably; that the defendant is causing nuisance and annoyance by keeping cots in the margin land along with old motor cars and thus, causing obstruction to the visitors and other tenants; that the defendant was also having dogs and because of such dogs, there has been apprehended danger to the visitors and other tenants.

The plaintiff sent notice dated 30.04.1974 which was received by the defendant on 03.05.1974. By the said notice, the plaintiff had called upon the defendant - tenant to vacate suit premises and also to pay the rent in arrears. The plaintiff had prayed for the decree for possession in respect of the suit premises along with direction to the defendant to pay Rs.319-50 being the rent for 35 months and the mesne profits of 15 days @ Rs.9/- along with Rs.20/- as notice charges. Making a total of Rs.340/-.

3. The deceased - tenant had filed his written statement - Exh.14 and contended that suit notice is not legal; the suit is barred by principle of resjudicata; he did not admit any of the allegations against him in the plaint. The defendant had challenged the reasonableness of rate of rent and pleaded that in 1940, the rate of rent of the suit premises was Rs.3/- only which was increased gradually to Rs.5/- then to Rs.6 then to Rs.7/- and then to Rs.9/-. It was also contended by the defendant - tenant that no rent receipts were given to him. It was also contended by the defendant that the plaintiff wanted under one pretext or the other to get vacated the suit premises and hence, the present suit is

filed. It was also contended by the defendant that he was not let out only a room, but was also given right to use otta in front of the room along with margin land.

4. The learned Judge of the trial Court was pleased to raise various issues, recorded in paragraph No.12 of his judgment which were answered by the learned Judge recording his findings in paragraph No.13.

The learned Judge was pleased to pass the following order:

"i) Suit of the plaintiff is dismissed.

ii)Standard rent of the suit premises is fixed at Rs.9/- p.m.

iii)Out of the amounts deposited in court in this suit by the defendants, Rs.909/- be paid to plaintiff for being adjusted against rent dues at the rate of Rs.9/- from 1-9-71 to 31-1-80. Remaining amount be returned to the defendant no.1/2.

iv)Plaintiff to bear his own cost and also to bear the same of the defendant.

v)Decree be drawn accordingly."

5. The plaintiff being aggrieved of the aforesaid

judgment and order, preferred Civil Appeal No.164 of 1980 before the Appellate Bench of Small Causes Court at Ahmedabad.

The learned advocate for the appellant at the time of hearing of the appeal pressed into service only the question of maintainability of the suit, requirement of the suit premises on the part of the plaintiff and comparative hardship which may be suffered by the parties.

In light of that, the Appellate Bench was pleased to frame the following issues for its determination:

- “1. Whether the learned trial Judge has erred in holding that the power of attorney holder of the sole trustee of the trust had no right to file this suit?
2. Whether the learned trial Judge has erred in holding that the plaintiff did not require the suit premises reasonably and bonafide for its occupation?
3. Whether the learned trial Judge has erred in holding that the greater hardship would be suffered by the defendants if decree of eviction is passed against them?

4. Whether the learned trial Judge has erred in dismissing the suit of the plaintiff for possession?

5. What order?"

The Appellant Bench answered issue Nos.1 to 4 in negative and issue No.5 - as per order.

6. Mr.M.B.Gandhi, the learned advocate appearing for the petitioner - original plaintiff vehemently submitted that the Courts below have erred in not passing the decree for possession in favour of the plaintiff - petitioner.

After the matter was heard at length, Mr.Gandhi gave up the challenge on other points as on those points, concurrent findings are recorded and it was not possible for him to assail the same successfully. Mr.Gandhi, however, pressed issue No.1 - Whether the learned trial Judge has erred in holding that the power of attorney holder of the sole trustee of the trust had no right to file this suit?

7. Mr.Gandhi, the learned advocate submitted that the learned trial Judge has erred in holding that the suit is

not tenable in its present form. He invited the attention of the Court to the relevant discussion on this issue by the learned trial Judge in paragraph Nos.16, 17, 18, 19 and 20.

8. Mr.Gandhi submitted that similarly, the Appellate Bench has also committed an error in answering issue No.1 in negative. He invited the attention to the relevant discussion in paragraph No.10, 11 and 12 of the Appellate Bench.

9. Mr.Gandhi submitted that in some other matter between the same plaintiff and one Mr.Harilal Maganlal, this question was considered by the learned Additional Principal Judge, City Civil Court, Court No.2, Ahmedabad. He submitted that in that matter, the very same decision of this Court, which is relied upon by the Courts below, in the matter of Atmaram Ranchhodbhai Vs. Gulambusein Gulam Mohiyaddin and Another, reported in 13 GLR 828 was considered and the learned Judge had observed as under:

“20. Now, in the present case, the plaintiff is the sole trustee. So there is no question of joining all other trustees either as plaintiff or defendant. The observations of the Hon'ble Supreme Court which have been quoted above clearly show that delegation is

permissible in case of necessity or in the regular course of business. The plaintiff is the sole trustee and is the head of a large religious community. He cannot be expected to personally attend to day-to-day management of all the properties of the trust which may be situated at different places. Hence, the delegation, if there is any, will be permissible. The plaintiff has also produced the entry relating to the trust in the register of Public Trusts at Exh.75. In the entry made under Sec.21 after inquiry under Sec.10 of the Bombay Public Trusts Act the name of the Manager is also mentioned in addition to the name of the sole trustee. It may be presumed that there is a provision for appointment of Manager in the deed of the trust or in the scheme of management of the trust and there is nothing illegal in the appointment of a Manager by the sole trustee. Moreover, Civil Procedure Code enables a party to file a suit through his agent. In the circumstances, it cannot be held that the suit is not maintainable."

10. Mr.Gandhi, the learned advocate next invited the attention of the Court to the definition of the term 'landlord' given in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The term is defined in Clause 3 of Section 5 which reads as under:

" "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account

or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises;"

Mr.Gandhi, the learned advocate submitted that the definition of the term, 'landlord' is so worded that it will include in its encompass not only the real owner of the property, but any person, who is for the time being either receives or is entitled to receive the rent. He submitted that, that being so, an Estate Manager, appointed by the sole trustee, can be delegated/assigned the power to file and prosecute the suit as observed by the learned Judge (who is at present adorning the Bench of this Court), that by way of necessity or in the regular course of business, delegation is to be held 'permissible'.

Mr.Gandhi, the learned advocate submitted that against the said judgment - in Civil Suit No.1 of 1986, a First Appeal was preferred before this Court being No.1530 of 1997, but then, the same was not required to

be decided on merits as the matter was settled between the parties, but then, the aforesaid observations remain undisturbed by this Court.

11. Mr.Gandhi, the learned advocate submitted that the decision of the Full Bench of this Court in the matter of Atmaram Ranchhodbhai (Supra) has no application to the facts of the present case. He submitted that the facts of the case before the Full Bench were peculiar and altogether different and have no similarity, even remotely, to the facts of the case on hand. He submitted that the Full Bench was considering the matter on a reference being made by learned Single Judge of this Court on two questions - (1) whether some only out of several co-trustees can effectively determine a tenancy by giving notice to quit and (2) whether a suit to evict a tenant can be filed by one or more co-trustees without joining other co-trustees in the suit.

The Full Bench has taken into consideration that both questions are of frequent occurrence in cases arising under the Rent Act and even under the general law of landlord and tenant, it was felt necessary that they be considered properly and law on the subject should be finally settled. The Full Bench necessarily considered

the duties, functions and powers of trustee and held that the same cannot be delegated to co-trustee. The Full Bench decided in categorical terms that, "Trustees cannot give even by unanimous resolution authority to anyone of them to be managing trustee." Mr.Gandhi, the learned advocate submitted that in absence of any specific provision to this effect, if such occurrence is allowed, it will amount to rewriting of the document from which power flows to the trustees. He submitted that it is a matter of which judicial notice can be taken that the trustees derive their power from 'the trust deed' and in the cases where there are more than 1 trustees, it is for the settler of the trust to decide as to what power he wants to confer on the trustees whether he wants any one of them to act as a managing trustee or not. If the trust deed does not provide for a post of a managing trustee, all the trustees acting unanimously also, cannot confer the status of a managing trustee on any one of themselves. He submitted that the fact - situation of the case on hand is different then the one which was under consideration of the Full Bench and therefore, the said decision has no application to the facts of the present case.

12. This Court having found substance in the submissions

of Mr.Gandhi and being convinced of the fact that the decision in the case of Atmaram Ranchhodbhai (Supra) has no application to the facts of the case on hand, holds that the Courts below have erred in holding that in light of the aforesaid decision (in the case of Atmaram Ranchhodbhai (Supra)), the sole trustee could not have appointed an estate manager and that the suit filed by the estate manager is not maintainable.

13. This Civil Revision Application is allowed to a limited extent. The suit filed by the estate manager, appointed by the sole trustee is held to be maintainable. The decree of eviction which is refused by both the Courts is not interfered with and Civil Revision Application is dismissed to that extent. In the result this Civil Revision Application is partly allowed on point of law. Rule is made absolute to the aforesaid extent only with no order as to costs.

(RAVI R.TRIPATHI, J.)

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